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Elizabeth M. Hagood
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Edwin H. Cooper, III
Vice Chairman
Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

BOARD:
Henry C. Scott
Paul C. Aughtry, III
Glenn A. McCall
Coleman F. Buckhouse, MD

**Minutes of
S.C. Board of Health and Environmental Control
Meeting**

January 12, 2006

The S.C. Board of Health and Environmental Control met on Thursday, January 13, 2006, at 10:00 a.m. in the S.C. Department of Health and Environmental Control Board Room, 2600 Bull Street, Columbia, S.C. (Attachment 0-1)

The following members were in attendance:

Elizabeth M. Hagood, Chairman
Member-at-large

Steven G. Kisner, Secretary
Aiken, 3rd District

Paul C. Aughtry
Greenville, 4th District

Glenn A. McCall
Rock Hill, 5th District

Coleman F. Buckhouse, MD
Florence, 6th District

Also in attendance were Commissioner Earl Hunter and guests. (Attachment 0-2)

Chairman Hagood stated notice of this meeting has been provided to all persons, organizations and news media, which have requested notification, as required by section 30-4-80(e) of the South Carolina Code of Laws.

Item 1: Consideration of December 8, 2005, meeting minutes - For Approval (Attachment 1-1)

Mr. McCall moved, seconded by Mr. Aughtry, to approve the minutes of the December 8, 2005, meeting. Approved

Item 2: Monthly Award for Excellence – December 2005 (Attachment 2-1)

Commissioner Hunter recognized the following:

Commissioner's Office – Mary Long;
Environmental Quality Control – Reedy River Sediment Study Team/Uwe
Klauck, Andy Miller, Sandy Benson, Chad Hendrix, Ainsley Wiles, Dan James,
John Cobb, Dee Detwiler, Steve Wall, Sarah Daniels;
Health Regulation – Joe Randall;
Health Services – Vanessa Murphy;
Region 1 Public Health District – Georgeann Nickles;
Region 3 Public Health District – Fairfield County Health Department
Employees/Mary Allen, Linda Daniels, Betty Doeden, Angie Glisson, Judy
Gwin, Patricia Klaus, Dee Mattox, Joyce Pearson, Karen Roseberry, Heather
Shaw, Leticia Velez;
Region 4 Public Health District – Patricia Secor;
Region 6 Public Health District – Willie Ann Hucks;
Region 8 Public Health District – Flu Team/Teresa Deloach, Molly Nelson,
Delores Foster, Martha Edwards, Kathy Goen, Terry McCrary;
OCRM/Charleston – Tess Rodgers.

Item 3: Request for a fourth six-month extension of Certificate of Need SC-04-06 issued to Hospice of Marlboro County for construction of a 10-bed inpatient hospice facility
(Attachment 3-1)

Mr. Joel Grice, Bureau of Health Facilities, presented the item to the Board. Mr. Kevin Long, Executive Director, is requesting additional time for implementation of this Certificate of Need, which expires January 20, 2005. The approved total project cost is estimated at \$2,986,300.

Mr. Kisner moved, seconded by Dr. Buckhouse, to find that Hospice of Marlboro County has demonstrated substantial progress and approve an additional six-month extension to implement Certificate of Need SC-04-06. Approved.

Item 4: Proposed Amendment of R.61-51, Public Swimming Pools, Legislative Review is Required (Attachment 4-1)

Mr. Jeff DeBessonnet, Bureau of Water, presented this item to the Board. Pursuant to S.C. Code Sections 1976 Code Section 44-55-2310 et seq., the Department regulates public swimming pools and related facilities. R.61-51, *Public Swimming Pools*, prescribes construction, operating and other conditions for a variety of recreational waters facilities in the state. The Department is proposing to amend R.61-51 to modify standards for permitting recreational waters facilities in the state.

Mr. McCall moved, seconded by Dr. Buckhouse, to grant initial approval to publish a Notice of Proposed Regulation in the State Register to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. Approved.

Item 5: PUBLIC HEARING AND REQUEST FOR FINAL APPROVAL – Proposed Amendment of Regulation 61-30, Environmental Protection Fees, State Register Document No. 3001, Legislative Review is Required (Attachment 5-1)

Mr. Jeff DeBessonnet, Bureau of Water, presented this item to the Board. The Department is proposing to amend R.61-30, to revise the recreational waters fees to match the current budget proviso (which is the amount the Department is currently charging).

A public hearing was conducted. (Attachment 5-2)

Mr. Kisner moved, seconded by Dr. Buckhouse, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 5-3)

Item 6: PUBLIC HEARING AND REQUEST FOR FINAL APPROVAL -- Proposed Repeal of R.61-85, Prevention and Control of Lead Poisoning in Children, State Register Document No. 3001, Legislative Review is Required (Attachment 6-1)

Mr. Mike Longshore, Bureau of Environmental Health, presented this item to the Board. The 2005 revision of the South Carolina Lead Poisoning Prevention and Control Act, South Carolina Code of Laws, Sections 44-53-1310 to -1480, has rendered R.61-85 obsolete; the public health concerns that R.61-85 was intended to address are now addressed through the revised statute. The revised statute also authorizes the Department to promulgate regulations, as needed, in support of the statute.

A public hearing was conducted. (Attachment 6-2)

Mr. McCall moved, seconded by Mr. Kisner, to find for the need and reasonableness of the proposed repeal and approve it for submission to the legislature for review. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 6-3)

Item 7: PUBLIC HEARING AND REQUEST FOR FINAL APPROVAL – Proposed Amendment of R.61-47, Shellfish, State Register Document No. 3002, Legislative Review is Required (Attachment 7-1)

Mr. David Baize, Bureau of Water, presented this item to the Board. The Department is proposing to amend R.61-47, Shellfish, to ensure consistency with other Department regulations, revise the Regulation to bring it up to date with current National Shellfish Sanitation Program guidance and practices; include a section on severability; update and expand definitions; update certification and permitting procedures; update growing area survey and classification standard

references; update requirements for the harvesting, handling and transportation of shellfish; update compliance and inspection procedures; update certified shipper facility and aquaculture requirements; and revise style, language, and grammar for clarity, readability and consistency. Mr. Baize provided an errata sheet with a correction. (Attachment 7-2)

A public hearing was conducted. (Attachment 7-3)

Mr. Aughtry moved, seconded by Mr. McCall, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 7-4)

Item 8: PUBLIC HEARING AND REQUEST FOR FINAL APPROVAL – Proposed Repeal of Regulations 121-1, Capacity Use Declaration, Waccamaw Area and 121-2, Capacity Use Declaration, Low Country Area

Proposed New Regulation 61- , Groundwater use and Reporting, State Register Document No. 3005, Legislative Review is Required (Attachment 8-1)

Mr. David Baize, Bureau of Water, presented this item to the Board. Regulation 121-1, Capacity Use Declaration, Waccamaw Area was promulgated in 1979 pursuant to the 1976 S.C. Code Section 49-5-50 and 49-5-90, and is specific to the counties described therein. Regulation 121-2, Capacity Use Declaration, Low Country Area was promulgated in 1981 pursuant to the 1976 S.C. Code Section 49-5-50 and 49-5-90, and is specific to the counties described therein. Pursuant to the 1976 S.C. Code Section 49-5-60 (amended 2000), Capacity Use Area designations for the Trident Area and the Pee Dee Area were made in 2002 and 2004, respectfully. Existing Regulations 121-1 and 121-2 do not apply to the newly designated Capacity Use Areas.

The proposed new regulation will delete the geographical description of the Waccamaw and Low Country Capacity Use Areas and associated exhibits. The proposed new regulation will provide procedures necessary for obtaining a permit to withdraw, obtain, or utilize groundwater and construct, maintain, and operate groundwater withdrawal wells within designated Capacity Use Areas including, but not limited to, submission of information concerning the amount of groundwater withdrawal, its intended use, aquifer or aquifers utilized, well construction information, conservation and management programs, and other information necessary to aid in evaluating the effect of existing or proposed groundwater withdrawal or use on the water resource of the area or areas. The regulation will also provide easures to abate and/or control saltwater encroachment, and for measures to prevent or mitigate unreasonable adverse effects on water users or water uses within designated Capacity Use Areas. Mr. Baize provided an addendum with additional changes in response to public comment.

A public hearing was conducted. (Attachment 8-3)

Mr. McCall moved, seconded by Dr. Buckhouse, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 7-4)

Item 9: PUBLIC HEARING AND REQUEST FOR FINAL APPROVAL – Proposed Amendment of R.61-7, Emergency Medical Services, State Register Document No. 3000, Legislative Review is Required (Attachment 9-1)

Mr. Alonzo Smith, Division of Emergency Medical Services presented this item to the Board. As a result of the review of this regulation, statutory mandates, and need to update and improve the overall quality of the regulation, the Department is proposing to revise R.61-7. This proposed revision will: bring it up to date with current statutes and practices; update and expand definitions; add enforcement action procedures to include classification of violations and guidelines for monetary penalties; update licensing procedures and requirements; update the standards for ambulance permits; update equipment lists for both ground and air ambulances; update sections related to training and certification of EMTs; add a section which provides for patient records; add a severability clause; and revise style, language and grammar for clarity, readability and consistency.

A public hearing was conducted. (Attachment 9-2)

Dr. Buckhouse moved, seconded by Mr. Kisner, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 9-3)

Item 10: PUBLIC HEARING AND REQUEST FOR FINAL APPROVAL – Proposed Amendment of R.61-79, Hazardous Waste Management Regulations, Federally Mandated Regulations with inclusion of the South Carolina Environmental Excellence Program, State Register Document No. 3003, Legislative Review is Required (Attachment 10-1)

Mr. John Litton, Bureau of Land and Waste Management, presented this item to the Board. The Department intends to amend R.61-79 to maintain conformity with federal requirements, ensure compliance with federal standards, and incorporate the South Carolina Environmental Excellence Program. A fiscal impact statement, and legislative review of this amendment will be required in order to include the South Carolina Environmental Excellence Program in R.61-79. Certain industries in the State will be able to store wastes for longer periods of time. Because this amendment requires membership in the South Carolina Environmental Excellence Program, it is broader in scope than the federal regulation and thus requires legislative review.

A public hearing was conducted. (Attachment 10-2)

Mr. Aughtry moved, seconded by Mr. McCall, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 10-3)

Item 11: PUBLIC HEARING AND REQUEST FOR FINAL APPROVAL – Proposed Amendment of R.31-1, Statement of Policy; R.30-12, Specific Project Standards for Tidelands and Coastal Waters (DHEC Coastal Division regulations for permitting in the Critical areas of the Coastal Zone); Re: Permitting of Access to Islands, State Register Document No. 3006, Legislative Review is Required (Attachment 11-1)

Ms. Carolyn Boltin, Deputy Commissioner for Ocean and Coastal Resource Management, presented this item to the Board. The proposed regulatory changes will replace the existing regulation R.30-12.N, Access to Small Islands, which was declared invalid due to vagueness in the February 22, 2005, decision of the SC Supreme Court. These proposed changes would add definitions and detailed project standards to be utilized in the evaluation of permits for access to islands. The changes are proposed to address the gap in the critical area regulations created by the Supreme Court decision and ensure consistent and effective Department review of applications for access to islands. Generally, the language proposed provides more specific, protective and enforceable standards for the management of coastal islands, which are important and distinct features of the South Carolina coast.

A public hearing was conducted. (Attachment 11-2)

Written comments from public hearing. (Attachment 11-3)

Mr. Aughtry moved, seconded by Mr. McCall, to find for the need and reasonableness of the proposed regulation and approve it, with one amendment resulting from public comment, for submission to the legislature for review. The amendment is that R.30-12.N(1)(d) shall read as reflected in Attachment 11-4. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 11-5)

Item 12: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation (October 1, 2005, through November 30, 2005) (Attachment 12-1)

Mr. Randy Clark, Health Regulations, stated seven (7) orders had been issued with penalties of \$33,790.

The Board accepted this item as information.

Item 13: Orders issued by Office of Ocean and Coastal Resource Management (October 1, 2005 through November 30, 2005) (Attachment 13-1)

Ms. Barbara Neale, Office of Ocean and Coastal Resource Management, stated six (6) orders had been issued with penalties of \$6,850.

The Board accepted this item as information.

Item 14: Administrative and Consent Orders issued by Environmental Quality Control (October 1, 2005 through November 30, 2005) (Attachment 14-1)

Ms. Claire Prince, Director, Enforcement and Compliance Assistance, Environmental Quality Control, stated forty (40) orders had been issued with penalties of \$261,330.

After discussion, the Board accepted this item as information.

Item 15: Status Report – Environmental Fees and Time Frames (Attachment 15-1)

Mr. Mike Rowe, Environmental Quality Control, presented this item to the Board. This informational item represents a report for the fourth quarter of the 2004-2005 Fiscal Year. It is also an annual summary of the year's activities to date. In addition, the first quarter report for fiscal year 2005-2006 is included.

The Board accepted this item as information.

Item 16: CONTESTED CASE – Carolinas HealthCare System v. South Carolina Department of Health and Environmental Control and Carolina Surgery Center, LLC, Piedmont Healthcare System, Inc., and South Cross Surgery Center, LLC, Docket No. 04-ALJ-07-0044-CC

South Cross Surgery Center, LLC. vs. South Carolina Department of Health and Environmental Control, and Piedmont Healthcare System, LLC, and Carolinas Surgery Center, LLC and Carolinas Healthcare System, Docket No. 04-ALJ-07-0068-CC
(Attachment 16-1)

Mr. Carl Roberts, Legal Counsel, introduced the case to the Board. Mr. Doug Muller represented Carolinas HealthCare System. Ms. Mary Margaret Hyatt and Mr. Stephen Bates represented Piedmont Healthcare System. Mr. David Summer represented Carolinas Surgery Center. Ms. Nancy Roberts represented the Department.

Dr. Buckhouse moved, seconded by Mr. Kisner, to uphold the decision the decision of the Administrative Law Judge. Approved

A verbatim transcript of these proceedings is included as part of the permanent record.
(Attachment 16-3)

Item 17: CONTESTED CASE – Oncology and Hematology Associates of SC, LLC, d/b/a Cancer Centers of the Carolinas vs. South Carolina Department of Health and Environmental Control and Spartanburg Regional Medical Center, Docket No. 03-ALJ-07-0158-CC (Attachment 17-1)

Mr. Roberts introduced the case to the Board. Mr. Ray Lark represented Cancer Centers of the Carolinas. Mr. James Long represented Spartanburg Regional Medical Center. Ms. Ashley Biggers represented the Department.

Mr. Kisner moved, seconded by Mr. McCall, to go into Executive Session for the purpose of obtaining legal advice. Approved.

While in Executive Session, no actions were taken.

Mr. Kisner moved, seconded by Dr. Buckhouse, find that no petitioner met its burden of proving reversible error under the Board's standard of Review and therefore to uphold the decision of the ALC, issuing a CON to both parties. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record.
(Attachment 17-3)

Item 18: Agency Affairs (Attachment 18-1)

Commissioner Hunter reported the following:

1. Suicide Prevention Walk, participation by agency staff;
2. Barnwell County School Milk Contamination Update;
3. Joint venture with Bureau of Air Quality and GIS Office on a carpooling tool, that other state agencies are interested in utilizing to assist employees with finding a co-worker to share the commute to work with.

The Board accepted this item as information.

Item 19: Legal Report

Mr. Carl Roberts updated the Board on legal matters. He also provided the Board with the Statement of Economic Interest Forms to be filed by April 14.

Mr. Aughtry moved, seconded by Mr. Kisner, to adjourn. Approved.

All referenced attachments are made a permanent part of these minutes.

Respectfully submitted,

Steven G. Kisner
Secretary of the Board

Minutes approved this 9th day of February 2006.

ATTEST:

Elizabeth M. Hagood
Chairman

Attachments

- 0-1 Agenda
- 0-2 Sign-in Sheet
- 1-1 December 8, 2005, Board Meeting minutes
- 2-1 Monthly Award for Excellence for December 2005
- 3-1 Request for CON Extension
- 4-1 Proposed Amendment of R.61-51, Swimming Pools
- 5-1 **Public Hearing** – Proposed Amendment of R.61-30, Environmental Protection Fees
- 5-2 Sign-in Sheet
- 5-3 Verbatim Transcript
- 6-1 **Public Hearing** – Proposed Repeal of 61-85, Prevention and Control of Lead Poisoning in Children
- 6-2 Sign-in Sheet
- 6-3 Verbatim Transcript
- 7-1 **Public Hearing** – Proposed Amendment of R.61-47, Shellfish
- 7-2 Errata Sheet
- 7-3 Sign-in Sheet
- 7-4 Verbatim Transcript
- 8-1 **Public Hearing** – Proposed Repeal of R.121-1 and 121-2, Capacity Use; Proposed New Regulation 61-____, Groundwater Use and Reporting
- 8-2 Errata Sheet
- 8-3 Sign-in Sheet
- 8-4 Verbatim Transcript
- 9-1 **Public Hearing** – Proposed Amendment of R.61-7, Emergency Medical Services
- 9-2 Sign-in Sheet
- 9-3 Verbatim Transcript
- 10-1 **Public Hearing** – Proposed Amendment of 61-79, Hazardous Waste Management Regulations

- 10-2 Sign-in Sheet
- 10-3 Verbatim Transcript
- 11-1 **Public Hearing** – Proposed Amendment of R.30-12, Re: Permitting Access to Islands
- 11-2 Sign-in Sheet
- 11-3 Written statements from Public Hearing
- 11-4 Amendment to Proposed Regulation
- 11-5 Verbatim Transcript
- 12-1 Administrative Orders, Consent Orders and Sanctions Letters Report – Health Regulation
- 13-1 Orders issued by Office of Ocean and Coastal Resource Management
- 14-1 Administrative and Consent Orders Report - EQC
- 15-1 Status Report – Environmental Fees and Time Frames
- 16-1 **Contested Case** – Carolinas HealthCare System, Petitioner, vs. SCDHEC and Carolina Surgery Center, Piedmont Healthcare System and SouthCross Surgery Center, Respondents, Docket No. 04-ALJ-07-0044-CC

 SouthCross Surgery Center, Respondent vs. SCDHEC and Piedmont Healthcare System, Carolina Surgery Center, Respondents, and Carolinas HealthCare System, Petitioner, Docket No. 04-ALJ-07-0068-CC
- 16-2 Verbatim Transcript
- 17-1 **Contested Case** – Oncology and Hematology Associates of SC, d/b/a Cancer Centers of the Carolinas, Petitioner, vs. SCDHEC and Spartanburg Regional Medical Center, Respondents, Docket No. 03-ALJ-07-0158-CC
- 17-2 Verbatim Transcript